

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,)	
)	Criminal No.04-599
)	Hon. Faith S. Hochberg, U.S.D.J.
v.)	
)	ORDER
ROY DEPACK,)	
)	Date: September 15, 2008
Defendant.)	

This matter comes before the Court upon Defendant's motion pursuant to R. 33 for a new trial based on newly discovered evidence; and the Court having reviewed the submissions of the parties; and the Court finding that Defendant pled guilty to the charges in this matter and waived his right to a trial; and the Court further finding that because Defendant did not have a trial he cannot now seek a *new* trial under R. 33, see United States v. Graciani, 61 F.3d 70, 78 (1st Cir. 1995) ("By its express terms, Rule 33 is confined to those situations in which a trial has been had."); United States v. Collins, 898 F.2d 103, 104 (9th Cir.1989); United States v. Lambert, 603 F.2d 808, 809 (10th Cir.1979); Williams v. United States, 290 F.2d 217, 218 (5th Cir. 1961); and good cause having been shown,

IT IS on this 15th day of September, 2008,

ORDERED that Defendant's motion for a new trial pursuant to R. 33 is DENIED.¹

/s/ Faith S. Hochberg
Hon. Faith S. Hochberg, U.S.D.J.

¹ The Court notes that it received a letter from Defendant on August 19, 2008 asking this Court to consider this motion under Fed. R. Civ. P. 60(b) if it wasn't proper under Fed. R. Crim. P. 33. However, the Court finds that because this is a criminal matter, Fed. R. Civ.P. 60 is inapplicable.